

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - - X
EDWARD HUYER, et al., :
 :
 Plaintiffs, :
 :
 vs. : Case No. 4:08-cv-00507
 :
 WELLS FARGO & CO. and :
 WELLS FARGO BANK, N.A., : HEARING TRANSCRIPT
 :
 Defendants. :
 - - - - - X

Courtroom, Fourth Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Thursday, January 21, 2016
10:00 a.m.

BEFORE: THE HONORABLE ROBERT W. PRATT, Senior Judge.

- - -

KELLI M. MULCAHY, CSR, RMR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

APPEARANCES:

For the Plaintiffs:

DEBORAH CLARK-WEINTRAUB, ESQ.
Scott & Scott, LLP
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, New York 10174

MICHAEL R. REESE, ESQ.
Reese, LLP
875 Avenue of the Americas, 18th Floor
New York, New York 10001

TODD GARBER, ESQ.
Finkelstein, Blankinship,
Frei-Pearson & Garber, LLP
1311 Mamaroneck Avenue
White Plains, New York 10605

For the Defendants:

MARK D. LONERGAN, ESQ.
REBECCA SNAVELY SAELAO, ESQ.
JOHN B. SULLIVAN, ESQ.
Severson & Werson
One Embarcadero Center, 26th Floor
San Francisco, California 94111

JESSE LINEBAUGH, ESQ.
Faegre Baker Daniels, LLP
801 Grand Avenue, Suite 3100
Des Moines, Iowa 50309-8002

CHAD R. ANDERSON, ESQ.
Wells Fargo Law Department
800 Walnut Street
Des Moines, Iowa 50309

P R O C E E D I N G S

(In open court.)

THE COURT: Please be seated.

MR. MESSINA: Your Honor, the case before the Court this morning is Huyer, et al. vs. Wells Fargo & Company, et al. Counsel, please enter your appearances for the record.

MS. CLARK-WEINTRAUB: Good morning, Your Honor. Deborah Clark-Weintraub from Scott & Scott for the plaintiffs.

THE COURT: All right.

MR. REESE: Morning, Your Honor. Michael Reese from Reese, LLP on behalf of the plaintiffs.

MR. GARBER: Todd Garber, Finkelstein, Blankinship, Frei-Pearson & Garber, for the plaintiffs.

MR. LONERGAN: Good morning. Mark Lonergan of Severson & Werson representing Wells Fargo Bank.

MS. SNAVELY SAELAO: Good morning, Your Honor. Rebecca Saelao, also of Severson & Werson, representing Wells Fargo Bank.

MR. SULLIVAN: And John Sullivan, from Severson & Werson, representing Wells Fargo Bank.

MR. LINEBAUGH: And good morning, Judge Pratt. Jesse Linebaugh from Faegre Baker Daniels. With us as well is Chad Anderson, our client from Wells Fargo.

THE COURT: Thank you very much.

Okay. Ms. Clark-Weintraub, I think it's your burden,

1 so why don't I listen and let you proceed.

2 MS. CLARK-WEINTRAUB: May I use the podium?

3 THE COURT: You may.

4 MS. CLARK-WEINTRAUB: May it please the Court.

5 We are here this morning on Plaintiffs' motion for
6 final approval of a \$25.75 million settlement of this class
7 action against Wells Fargo. As we've stated in our papers, Your
8 Honor, we respectfully submit that the proposed settlement is an
9 excellent recovery for the class given the risks of continued
10 litigation and the substantial risks and uncertainties even with
11 maintaining the action as a class action going forward.

12 The proposed settlement provides a substantial benefit
13 for the class, and it eliminates the substantial risks, which
14 I'll talk about a little bit in a few minutes, and most
15 importantly, it eliminates the risk that if the litigation had
16 continued the plaintiffs and the class may have recovered much
17 less or even nothing at all.

18 Importantly, the settlement was reached at a point in
19 the litigation where Plaintiffs and their counsel were in an
20 excellent position to evaluate the strengths and weaknesses of
21 the claims versus the settlement benefit. The settlement, as
22 Your Honor is aware, was reached after seven years -- almost
23 seven years of litigation. At the time the settlement was
24 agreed to in principle, merits discovery was almost entirely
25 completed, and we were about to enter the expert phase of the

1 case.

2 Further, the settlement, as Your Honor is aware, was
3 reached after a mediation with a very well-respected mediator
4 that's known to the Court, the Honorable Arthur Boylan, and the
5 case law holds that under these circumstances where a class
6 action settlement has been negotiated at arm's length by
7 experienced counsel with substantial discovery with the help of
8 a neutral, a settlement of a class action is presumptively fair.

9 And, Your Honor, since the Court granted preliminary
10 approval back in September, notice has been disseminated to the
11 class, and there has been very limited opposition to the
12 settlement from class members, notwithstanding that this is a
13 very large class, more than 2.7 million class members, as we
14 stated in our papers.

15 We have received only 13 objections, and as we noted
16 in our reply papers filed a week or so ago, several of those
17 objections are from so-called serial or professional objectors
18 who come in and routinely object to class action settlements.

19 In addition, we have received only 219 requests for
20 exclusion. Five of those are technically untimely under the
21 terms of the settlement. And we can talk about this at the end.
22 Plaintiffs would request that the Court allow the late
23 exclusions, and I'm sure Wells Fargo will want to be heard with
24 respect to that issue.

25 But the point at the outset is that there is, again,

1 very limited opposition to the settlement from class members,
2 which we believe supports our assertion that the settlement is
3 an excellent recovery given the claims and the risks of
4 prevailing on the claims in the case.

5 In view of all that, obviously, the Court has to
6 evaluate the settlement using the Van Horn factors that the
7 Eighth Circuit has set out, and I'll turn to that in a couple of
8 minutes, because we've discussed those at length in our papers,
9 and I think we've probably said most of the important things
10 that need to be said about them. And, obviously, if the Court
11 has any questions, I'd be happy to answer them.

12 But I wanted to start this morning with the article
13 that Judge Bucklo had written which Your Honor obviously thought
14 was very helpful, and we did too, and so I'd like to address
15 each of the issues Judge Bucklo sets forth in her article and
16 explain why we believe those are either not issues in the case
17 or why circumstances here support approval of the settlement.

18 So just briefly, Your Honor, the first issue that
19 Judge Bucklo raised in her article was the issue of the
20 availability of insurance and the amount of insurance, which
21 obviously, in many class action cases, is an important data
22 point for the Court in deciding whether or not a settlement
23 should be approved.

24 Here there was no insurance so --

25 THE COURT: Ms. Clark-Weintraub --

1 MS. CLARK-WEINTRAUB: Yes.

2 THE COURT: -- did you find the article as helpful as
3 I did?

4 MS. CLARK-WEINTRAUB: I did. I did, Your Honor. I
5 thought Judge Bucklo's -- the issues that she raised are very
6 important. I think they are important for a court to consider
7 in deciding whether or not to approve a class action settlement.
8 I think there are very important issues.

9 THE COURT: Plagiarism is the highest form of
10 flattery, I guess, but it made sense to me that I should share
11 it with the lawyers when I saw it, so --

12 MS. CLARK-WEINTRAUB: Yes, Your Honor. And,
13 obviously, we appreciate that you did that.

14 THE COURT: I apologize for interrupting. Go ahead.

15 MS. CLARK-WEINTRAUB: That's okay. So the--

16 THE COURT: So insurance doesn't factor into this?

17 MS. CLARK-WEINTRAUB: Doesn't factor in. Wells Fargo
18 paid the entire settlement amount, which is sitting in escrow,
19 out of its own pocket, which we believe is a significant factor
20 in showing that this is a significant achievement, this
21 settlement, the fact that Wells Fargo paid it out of its own
22 pocket, because, as Judge Bucklo observed in her article, even
23 large companies don't like to reach into their pockets to pay a
24 settlement. And so we think the fact that Wells Fargo did that
25 here supports our assertion that this is a significant result

1 for the class.

2 The second item that Judge Bucklo highlighted in her
3 article was the extent of discovery that preceded the class
4 action settlement. Here there was no so-called confirmatory
5 discovery. As I said a few moments ago, merits discovery was
6 almost entirely completed at the time the settlement was
7 reached.

8 We did discuss in some detail the discovery that was
9 taken in terms of the numbers of documents and depositions, et
10 cetera, that were taken, but Judge Bucklo suggested that it
11 would be helpful for a court to know a little bit more detail
12 behind those numbers, and so let me give that to the Court now
13 so that you have it.

14 In terms of depositions, as we said in our papers,
15 there were 12 depositions taken or defended by the plaintiffs'
16 counsel in the case. Each of the plaintiffs was obviously
17 deposed in advance of the class certification motion, and,
18 obviously, those depositions were defended by the plaintiffs'
19 counsel.

20 Plaintiffs took eight depositions in the case. Most
21 of the deponents were high-level executives and/or managers in
22 the property preservation area of Wells Fargo, which is the area
23 within the company that is responsible for overseeing the
24 implementation of the policies with respect to property
25 inspections and property inspection fees.

1 THE COURT: Are those people in West Des Moines or are
2 they in San Francisco or --

3 MS. CLARK-WEINTRAUB: They were in Des Moines, Your
4 Honor. All of the -- let me just think. Yes. All of the --
5 except for one. I take -- no. All of the depositions were here
6 in Des Moines, all of them.

7 THE COURT: All right.

8 MS. CLARK-WEINTRAUB: And also some of the witnesses,
9 in addition to being questioned about the policies and
10 procedures Wells Fargo used to order and then charge borrowers
11 for property inspections, they were deposed concerning GSE
12 guidelines and investor servicing guidelines that they were
13 following.

14 Certain of the witnesses were also knowledgeable and
15 deposed regarding how Wells Fargo accounted for property
16 inspection fees on its books because we were interested,
17 obviously, in later stages of the case, in tracing those
18 payments through so that we would be able to show, hopefully, if
19 we had to go to trial, that the payments were made, in fact, by
20 the borrowers or were still owed by the borrowers and so were
21 reflected on the borrower records.

22 THE COURT: Let me go back. When you said the
23 plaintiffs were deposed, is that Mr. and Mrs. Huyer or the
24 Castros or which plaintiffs?

25 MS. CLARK-WEINTRAUB: All of them. Mr. and Mrs. Huyer

1 were deposed, and Mr. and Mrs. Castro were deposed as well.

2 THE COURT: Okay. Thank you.

3 MS. CLARK-WEINTRAUB: So the fact witnesses from Wells
4 Fargo who were deposed with respect to the issues I just
5 summarized were Keith Schares, who is a Wells Fargo vice
6 president, who had responsibility for the property preservation
7 and default accounts payable areas at the bank.

8 He also headed the corporate advance reconciliation
9 team at one point, and, as Your Honor may or may not recall from
10 our papers, you know, corporate advances are -- some property
11 inspection fees are recorded on the books of Wells Fargo as
12 corporate advances, and so he was able to talk about issues
13 concerning how those fees appeared on the books of Wells Fargo
14 and how they appeared on borrower accounts as well.

15 We also deposed Sherilee Massier, who was a manager
16 within the Wells Fargo property preservation area, and also
17 Deric Gourd, who was a business systems analyst in that area,
18 and he had particular knowledge with respect to a document that
19 was called the matrix. And you may recall that document, Your
20 Honor, from the class certification briefing, but that was the
21 document that contained the coding which would determine when a
22 property inspection would be ordered and/or suppressed by Wells
23 Fargo.

24 So those were certain of the depositions we took on
25 the merits issues of the case. We also issued a series of

1 30(b)(6) notices with respect to other issues. So, for example,
2 we had a 30(b)(6) deposition of a Wells Fargo vice president
3 named Midge Baker, who was a vice president in the default
4 reporting area of Wells Fargo, and she was knowledgeable about
5 the operation of the Fidelity system, which was the computer
6 system that Wells Fargo used to order property inspections.

7 We also noticed several 30(b)(6) depositions with
8 respect to either GSE and investor guidelines for ordering
9 property inspections and assessing their costs and also issues
10 concerning Answers to Interrogatories that Wells Fargo had
11 provided with respect to potential damages questions and numbers
12 of inspections that had been ordered.

13 After the class was certified, Wells Fargo produced,
14 as we say in our papers, about 13.5 gigabytes of data,
15 loan-level data for the class members, and we also had a
16 30(b)(6) deposition with respect to that data. A gentleman by
17 the name of Ronnie Rittenhouse, who is a manager in the
18 servicing data analytics section of Wells Fargo who had
19 supervised the pulling of that data, was deposed with respect to
20 what the data showed, the various coding in the data, because,
21 again, we at that point were getting ready to work, you know,
22 provide -- we had provided that data to our expert, and they
23 obviously had to work with the expert to determine what the data
24 we received showed, was there additional data that we need to
25 ask Wells Fargo to pull, et cetera. So Mr. Rittenhouse was

1 deposed. I believe it was last January, if I'm not mistaken.

2 And then finally, Plaintiffs also deposed Wells
3 Fargo's class certification expert, Dr. William Hamm, who is an
4 economist and was also an economist with experience in the
5 mortgage servicing industry, and he was also subsequently
6 designated as Wells Fargo's merits expert on mortgage servicing
7 issues.

8 THE COURT: So of the eight non -- or the eight
9 depositions taken that weren't of the plaintiffs, how many of
10 those were experts?

11 MS. CLARK-WEINTRAUB: There was just the one expert,
12 Dr. Hamm, in connection with class certification.

13 THE COURT: Ms. Weintraub, I'm having a difficult
14 time understanding the settlement from the perspective of I
15 don't know what the normal, if there was such a thing, is. We
16 have '04 to '13. But a drive-by security check, that's what
17 I'll call --

18 MS. CLARK-WEINTRAUB: Uh-huh.

19 THE COURT: -- the primary item of damage, what's the
20 charge that appeared on a homeowner's bill from Wells Fargo? Is
21 it \$20? Is it \$80? I have no way of --

22 MS. CLARK-WEINTRAUB: It was either 15 or 20 dollars,
23 depending upon what year it was. There was a point in time, I
24 want to say it was in 2010, that the charge changed to \$20, but
25 before that it was \$15. So each inspection was either 15 or 20

1 dollars, and it would appear on the statement under a heading
2 "Other Charges," so it would not be identified as a property
3 inspection fee.

4 THE COURT: That's what your discovery went to, the
5 way they charged these drive-by security checks?

6 MS. CLARK-WEINTRAUB: Yes. Yes.

7 THE COURT: Okay.

8 MS. CLARK-WEINTRAUB: Our discovery went to that. It
9 also went to, you know, what -- their defense in the case was
10 that they were charging or ordering and charging for property
11 inspections consistent with guidelines, both GSE guidelines and
12 investor guidelines, and there was discovery taken about that as
13 well.

14 And then again, once we got down into the granular
15 level of the data and what charges were there, there were
16 disputes about whether or not plaintiffs could prove that a
17 payment, for example, actually came from the borrower as opposed
18 to being paid by some third party, for example, in a foreclosure
19 situation.

20 THE COURT: Okay. So active loans, if I have 921,241
21 class members, would each of them have been the victim of a
22 drive-by security check?

23 MS. CLARK-WEINTRAUB: They would have had at least
24 one, as I understand it, one inspection fee, drive-by security
25 check inspection fee.

1 THE COURT: I don't know what to call it --

2 MS. CLARK-WEINTRAUB: Right.

3 THE COURT: -- so you tell me the right terminology.

4 MS. CLARK-WEINTRAUB: No. That's fine.

5 THE COURT: Okay.

6 MS. CLARK-WEINTRAUB: But they would have had at least
7 one of those inspections ordered.

8 THE COURT: Okay.

9 MS. CLARK-WEINTRAUB: Now, whether they would have
10 paid for that inspection and whether that inspection fee would
11 have been waived, that's another issue, but my understanding as
12 to how Wells Fargo pulled the data is if there was at least one
13 inspection ordered --

14 THE COURT: Okay.

15 MS. CLARK-WEINTRAUB: -- they were on the list.

16 THE COURT: But my understanding is all of those
17 people are going to be paid; they don't need to fill out a form,
18 they're going to be paid?

19 MS. CLARK-WEINTRAUB: The active people are going to
20 be paid automatically.

21 THE COURT: Right. Right.

22 MS. CLARK-WEINTRAUB: The paid-in-full loans, those
23 people will be paid automatically.

24 THE COURT: Right.

25 MS. CLARK-WEINTRAUB: The only people who need to

1 complete the claim forms are the post-sale --

2 THE COURT: Post-sale.

3 MS. CLARK-WEINTRAUB: -- group because of the
4 limitations with the data.

5 THE COURT: I apologize again for interrupting. You
6 can pick up where I interrupted you.

7 MS. CLARK-WEINTRAUB: That's okay.

8 So I think I've described the deposition testimony
9 that's been taken. Obviously, just briefly on the documents,
10 most of the documents and data that was produced, obviously,
11 came from Wells Fargo, and those types of -- the types of
12 documents that were produced in addition to the data included,
13 you know, servicing guidelines, documents relating to the
14 plaintiffs' loans. There were e-mail -- e-mail of relevant
15 personnel were produced after the parties agreed on custodians
16 and search terms to be used in conducting a search of e-mail.
17 So all of those documents were produced.

18 We also received documents from a company that at the
19 time was called LPS, which was the company that owned the
20 Fidelity system. They produced manual-type documents, for lack
21 of a better word, which described how the Fidelity system
22 operated and how it reflected certain information.

23 We also subpoenaed and obtained documents from the
24 property inspection vendors who actually conducted the drive-by
25 inspections of the property, and we received documents from them

1 such as their contractual arrangements with Wells Fargo and
2 certain documentation relating to the inspections that were
3 conducted on the plaintiffs' --

4 THE COURT: So Wells Fargo outsourced this?

5 MS. CLARK-WEINTRAUB: Wells Fargo did not conduct the
6 inspections itself. It did have vendors that did that, yes.

7 THE COURT: Okay. Ms. Clark-Weintraub, is this kind
8 of lawsuit the first of its kind? I know I have all kinds of
9 resumes from all the law firms that tell me they did consumer
10 work.

11 MS. CLARK-WEINTRAUB: Uh-huh.

12 THE COURT: Have large financial institutions or, for
13 that matter, small financial institutions been the subject of
14 being defendants in these kinds of class actions before your
15 lawsuit?

16 MS. CLARK-WEINTRAUB: Not for -- to my knowledge, Your
17 Honor, not for property inspection fees specifically. Our case
18 was the first in that regard. But, obviously, the banks have
19 been sued for all sorts of other types of charging and claims.
20 There were, you know, claims about check ordering that were
21 settled at one point. There were forced-place insurance cases.

22 So there are many, many, you know, consumer cases that
23 are brought against the banks for conduct of one sort or the
24 other, but this, again, to our knowledge, after the, you know,
25 findings of the court in Louisiana, which, obviously --

1 THE COURT: Right.

2 MS. CLARK-WEINTRAUB: -- we alleged in our
3 complaint --

4 THE COURT: That was in bankruptcy court, wasn't it?

5 MS. CLARK-WEINTRAUB: That was, yes, Your Honor. So
6 ours was the first action that tried to recoup those charges on
7 behalf of a class of insurers.

8 I will tell the Court that after our case was brought,
9 and particularly after we survived the motion to dismiss, to
10 some degree, and then obtained class certification, other cases
11 were brought against other banks for the same conduct, and some
12 of those are cited in our papers because the courts in those
13 cases didn't -- their rulings were not as favorable to the
14 plaintiffs in those cases as the rulings that we obtained in our
15 case. And so that's --

16 THE COURT: Right.

17 MS. CLARK-WEINTRAUB: Does that answer your question?

18 THE COURT: Thank you.

19 MS. CLARK-WEINTRAUB: So getting back to Judge
20 Bucklo's article, so that, I think, is a fairly comprehensive
21 summary of the deposition and document discovery that was taken
22 in the case.

23 You know, all of the documents were reviewed by
24 attorneys at the counsel for the plaintiffs' offices, and,
25 obviously, the data we provided to a data analytics firm and we

1 worked with them to slice, you know, and dice the data.

2 THE COURT: What does the data analytics firm do?

3 MS. CLARK-WEINTRAUB: It took the chart, the data that
4 Wells Fargo produced, and it was able to break it down for us
5 into initial inspections, subsequent inspections, delinquency
6 inspections versus corporate advance inspections. And so we
7 used -- they identified waivers of fees, payments, assessments
8 so they were able to at least begin that process at the time of
9 the mediation with Judge Boylan.

10 THE COURT: And is that what -- the expenses claimed
11 are not very detailed. Is that some of the expenses that you
12 seek reimbursement for, to these analytics firms?

13 MS. CLARK-WEINTRAUB: Yes. Among others. We had
14 worked with four different experts in the case. We had had to
15 produce a report from a merits experts on mortgage loan
16 servicing issues, so there was an expert named Wyatt who was our
17 expert on those issues. We also worked with a -- and he was a
18 disclosed expert under Rule 26.

19 We also worked with various consulting experts whose
20 identities I won't disclose in open court. But so we worked
21 with a forensic accounting expert. You know, as I said before,
22 we were trying to trace payments through and trying to figure
23 out what issues existed in that regard so we worked with a
24 forensic accounting firm to do that. Then we worked with two
25 different data analytics firms. One we weren't satisfied with

1 initially and so we replaced that person with a second firm who
2 performed much -- in a much better fashion.

3 So, again, getting back to Judge Bucklo's article,
4 there was a significant amount of discovery taken in the case,
5 and if the Court requires any additional information with
6 respect to any particular depositions or documents, we'd
7 obviously be happy to --

8 THE COURT: Would you send me something after we
9 conclude here? I'm going to want more than this, but give me
10 the dates and the names of the deponents.

11 MS. CLARK-WEINTRAUB: Yes.

12 THE COURT: That would be helpful. You can do it in
13 e-mail. That way you don't have to worry about filing it. Just
14 copy the defendants.

15 MS. CLARK-WEINTRAUB: Okay. We will do that.

16 Okay. The third issue that Judge Bucklo notes in her
17 article is whether or not -- that the Court should be wary
18 whether or not other pending actions that are tangential to the
19 subject matter of a class action are somehow being released
20 through the class action settlement, and that is not happening
21 here.

22 As we said in our papers in response to some of the
23 objections that are received -- that were received, the release
24 here is narrowly tailored to the property inspection fee issue
25 and Wells Fargo's practices with respect to property

1 inspections.

2 The next item Judge Bucklo highlighted were claims
3 rates and pro rata share, and she urges courts to delve into the
4 issues of class size and expected recovery per dollar loss. And
5 here the class size, again, you know, we have 2.7 million loans
6 that were impacted here.

7 You know, the law regarding what needs -- what a court
8 needs to evaluate in terms of loss in approving a class action
9 settlement varies from circuit to circuit. In the Seventh
10 Circuit, where Judge Bucklo is a district judge, they have some
11 pretty specific rules about what has to be reviewed by the
12 judge. The Eighth Circuit's most recent pronouncement on the
13 issue was in the Marshall v. National Football League case, and
14 I can --

15 THE COURT: Right. I hadn't seen it referred to.
16 Judge Bye in that case said that the court should look at this
17 like a private contract negotiated by two people. I hadn't seen
18 that before. Is that a normal formulation of the court's job?

19 MS. CLARK-WEINTRAUB: It's a little -- I would say,
20 you know, I mean, obviously, the court is acting in a fiduciary
21 capacity, and I think the court, as Judge Bucklo highlights in
22 the article, has to, you know, overview the situation to make
23 sure that the rights of absent class members are not being
24 impinged upon in terms of settlement.

25 I think, you know, where the Eighth Circuit may

1 diverge from the Seventh Circuit in this regard is whether or
2 not the court has to make specific factual findings about what
3 is the maximum recovery the plaintiffs could have achieved, you
4 know, on this claim or that claim versus how much of the
5 settlement --

6 THE COURT: Well, the estimates in your papers tell me
7 that the exposure that Wells Fargo had was between 100 million
8 and 115, if I recall.

9 MS. CLARK-WEINTRAUB: Well, that was our best
10 estimate --

11 THE COURT: Okay.

12 MS. CLARK-WEINTRAUB: -- of our strongest claims.

13 THE COURT: And is that based on your experts and
14 counsel's consensus or what?

15 MS. CLARK-WEINTRAUB: Well, that was based on our
16 experts' preliminary estimates when we were doing the mediation
17 with Judge Boylan.

18 So as we explained in our papers, you know, obviously,
19 we thought various aspects of the claim were stronger than
20 others, and in the Marshall case the Eighth Circuit makes the
21 point that, you know, it's really not -- it's not helpful to the
22 court to just work with numbers because a number is a number and
23 it doesn't say anything about whether or not a party is going to
24 be able to prevail on that claim and achieve that number.

25 So, obviously, we felt that there were certain

1 property inspection claims that we had a better chance of
2 winning than others. For example, the initial inspections, we
3 thought that a jury might be persuaded by Wells Fargo's argument
4 that, you know, well, gee, at least we should have had the
5 ability to go out and inspect once, right, just to make sure
6 everything was okay.

7 So we viewed -- you know, after discovery, after
8 obtaining all the discovery we did, we viewed those claims as
9 not nearly as strong as a situation where, like the Navas
10 Castros went through, you had month after month after month, you
11 know, of clean inspections but yet another inspection being
12 conducted and another charge being put on the account. So there
13 were -- you know, as I said, there were different charges, and
14 we thought that we had a better chance of success with respect
15 to some than others.

16 But with respect to the estimate we had in our papers,
17 100 to 115, those were for the subsequent inspections that were
18 paid that we could show were paid by the borrower or were still
19 outstanding on the active loan accounts, and so we thought those
20 were the best claims that we had the best chance of success on,
21 and so we felt that the settlement that we achieved, 25.75
22 million, in light of that range of potential recovery, was, you
23 know, fair and reasonable and adequate under Rule 23.

24 Judge Bucklo's article goes on to say that you
25 should -- the court should, you know, determine a per-dollar

1 loss or do a per-dollar loss calculation. I mean, we did not do
2 that in our papers, but still if you took the 100- to
3 115-million-dollar range and divided it by the amount of the
4 settlement, you know, after you deduct notice and administration
5 costs, you know, assume just for purposes of this calculation,
6 you know, the fee and expense award requested, you'd get a
7 recovery of about 13 cents on the dollar for every dollar lost.
8 So that, again, given the cases which we have cited in our
9 papers, we think that is an eminently reasonable settlement in
10 this case given the substantial risks to prevail.

11 The next issue Judge Bucklo raised was the claims
12 process, and I think we've discussed that already with the
13 active and paid. Here there is no claims process for the active
14 and paid-in-full loans. Those are automatically getting checks
15 once the calculations are done. The post-sale loans have to
16 file the claims because of the data limitations. We cited in
17 our papers other cases in which this sort of hybrid approach was
18 taken for this very reason. It was approved by the court.

19 THE COURT: Is there any kind of median or average
20 check that active and paid-in-full are likely to get?

21 MS. CLARK-WEINTRAUB: You know, I don't know that
22 we've done that calculation, and I don't know that it could be
23 done until the claims process is complete. I mean, I'd have to
24 think about that.

25 You know, obviously, in the plan of allocation

1 formula, different fees are weighted --

2 THE COURT: Right.

3 MS. CLARK-WEINTRAUB: -- in different ways given the
4 strength of the claim, so I don't know that there would be an
5 average across the board.

6 THE COURT: Okay.

7 MS. CLARK-WEINTRAUB: The next issue Judge Bucklo
8 raises in her article is the issue of reversion and cy pres.
9 There is no reversion in this case. Wells Fargo is not going to
10 get any of this money back.

11 In terms of cy pres, there is a provision for cy pres
12 but only after there's been two rounds of distributions to class
13 members, and let me explain just briefly how that works. And
14 this is -- if the Court wants to look at it later, it's laid out
15 in Section --

16 THE COURT: Where do I find that? I must have missed
17 this. Where do I find the cy pres reference?

18 MS. CLARK-WEINTRAUB: It's in Section 6.07 of this
19 settlement stipulation.

20 THE COURT: Okay. Do you know which document that is?

21 MS. CLARK-WEINTRAUB: Yes. It's Document 243-3.

22 THE COURT: 243-3?

23 MS. CLARK-WEINTRAUB: Yes.

24 THE COURT: Okay. Thank you.

25 MS. CLARK-WEINTRAUB: And it starts on page 25 and

1 then goes over to 26. But specifically, it's laid out in
2 subparagraph (c), 6.07, subparagraph (c).

3 THE COURT: 6.07.

4 MS. CLARK-WEINTRAUB: So after the claims process is
5 complete, the administrator will issue checks, obviously based
6 upon the recognized loss calculations, to all the class members
7 with the active and paid-in-full loans and those class members
8 with post-sale loans who have filed claims. The checks will be
9 good for a period of 90 days, and so, you know, there is,
10 obviously, the potential that somebody who gets a check doesn't
11 cash it, and if they don't cash it, obviously, there's going to
12 be money left in the fund. So the agreement provides --

13 THE COURT: It --

14 MS. CLARK-WEINTRAUB: Yes, sir.

15 THE COURT: It says here at the bottom, "If, six
16 months after such redistribution, any funds remain in the Net
17 Settlement Fund, then such balance shall be contributed to the
18 United Way." Is that -- United Way of where?

19 MS. CLARK-WEINTRAUB: United Way of --

20 MR. LONERGAN: We haven't specified a local chapter.

21 MS. CLARK-WEINTRAUB: Yeah. We haven't specified a
22 local chapter, but it's to be earmarked for --

23 THE COURT: Right. Doesn't she say -- I've not had
24 this before, but doesn't she say it generally has to go to the
25 same kind of damage or recovery that a typical plaintiff would

1 receive?

2 MS. CLARK-WEINTRAUB: Well, I think it has to be
3 reasonably related to the claims in the case.

4 THE COURT: Okay.

5 MS. CLARK-WEINTRAUB: So that's why we say in the
6 stipulation that it is to be contributed to the United Way with
7 funds earmarked for financial education classes so --

8 THE COURT: Okay. But not United Way of Central Iowa
9 or -- there's been no discussion about that?

10 Okay. My circuit disapproved of a cy pres settlement
11 not too long ago, Judge Loken, regarding legal services. Are
12 you familiar with that case?

13 MS. CLARK-WEINTRAUB: No, I'm not, Your Honor. But
14 let me just make the point --

15 THE COURT: Right. Right.

16 MS. CLARK-WEINTRAUB: -- that I don't consider this a
17 cy pres settlement.

18 THE COURT: Okay.

19 MS. CLARK-WEINTRAUB: I think in any class action, no
20 matter how many rounds of distribution you make, you're always
21 going to be left with some minimal amount of funds at the end of
22 the day because it's just simply not all distributed and not all
23 claimed. And it's fairly typical, at least in my experience,
24 for there to be some sort of a cy pres distribution at the end
25 of the day after there have been at least several rounds of

1 distribution to the class members.

2 THE COURT: So --

3 MS. CLARK-WEINTRAUB: And again --

4 THE COURT: -- this isn't cy pres?

5 MS. CLARK-WEINTRAUB: I guess technically the last
6 part of it is, but, I mean, it's not like a consumer settlement
7 where the class members are getting no or limited relief and the
8 bulk of the settlement is being contributed to some charitable
9 organization. That's not what is happening here.

10 Here, at the end of the claims process, the monies,
11 after deduction for expenses, are going to be sent out to
12 everybody, and either those checks are going to be cashed by the
13 class members or they won't be, and if they're not and there's
14 funds remaining, we're going to do a second round of
15 distributions out to the class members, and it would be our
16 expectation that after the second round there will be not a lot
17 of -- you know, not millions and millions and millions of
18 dollars of funds left in the account.

19 So we would expect it to be, you know, a minimal
20 amount, and, obviously, before the -- you know, before the funds
21 are distributed anywhere, we would have to come to the Court for
22 the Court to sign the distribution order.

23 THE COURT: You were about to remark on another one of
24 Judge Bucklo's points when I interrupted you.

25 MS. CLARK-WEINTRAUB: Yeah. I was just going to go

1 through the paragraph, which we've just done, in the settlement
2 stipulation. So, again, we have two rounds in the distribution.
3 In the second round the checks will go to anyone who cashed
4 their check the first time around and has a distribution of at
5 least \$25 because, obviously, the more de minimis the checks
6 are, the less incentive somebody would have to cash the check
7 potentially.

8 And so in this matter, I mean, there's no reason to
9 send checks to people who didn't cash them the first time
10 around, right? It's just a waste of money, and, obviously,
11 it's, you know, costly to keep sending out checks for the postal
12 charges, et cetera.

13 So then, as I said, only after that second round of
14 distribution, if there's any money remaining, would there be the
15 award to the United Way with the funds earmarked for financial
16 education classes for consumers, as we discussed.

17 So that leaves, I think, one more issue that Judge
18 Bucklo talked about in her article, which is the class notice
19 and the importance of ensuring that the class notice complies
20 with due process and that it has -- it contains the right
21 substance.

22 I don't think there can be much dispute, Your Honor,
23 that the class notice procedures and the substance of the
24 notices in this case do comply with due process. We had direct
25 mail notice. The postcards went out to 2.7 million class

1 members. And this is all laid out in the declarations of the
2 claims administrator, Jennifer Keough, and then the supplemental
3 declaration of Lisa Castaneda laying out all of the notices that
4 were made.

5 They also mailed additional notice packets in response
6 to inquiries from class members, over 20,000 of them. The
7 notice was also published in both The Wall Street Journal and
8 over the NPR newswire. It was posted on the settlement Web site
9 the Garden City Group print administrator maintains.

10 And this means of notice, direct mail notice
11 supplemented in this way by, you know, publication notice, the
12 settlement Web site, telephone support by the claims
13 administrator, this form of notice has repeatedly been upheld.

14 THE COURT: Was it just a simple error that they did
15 it a month early, The Wall Street Journal? Is that what
16 happened?

17 MS. CLARK-WEINTRAUB: Yes. Yes.

18 THE COURT: Okay.

19 MS. CLARK-WEINTRAUB: Yes. They did it again, though.

20 THE COURT: Okay.

21 MS. CLARK-WEINTRAUB: So they did it twice, once for
22 free.

23 THE COURT: Okay.

24 MS. CLARK-WEINTRAUB: And then again, the contents of
25 the notice also comply with due process. I mean, the notice

1 appropriately describes the subject matter of the litigation,
2 informs class members of their rights to either object or opt
3 out or remain in the class, and so we don't think there is any
4 issue that the class notice was adequate and complies with due
5 process in this case.

6 So I think that takes care of the issues that Judge
7 Bucklo talked about in her article, unless Your Honor has any
8 further questions on those.

9 THE COURT: Well, she did say that this settlement
10 process does not favor the judge. So I don't know if she's been
11 reversed by Judge Posner, like most judges in the Northern
12 District, or not.

13 Let me go to the merits for a moment. The way I read
14 the papers, and you lawyers help me if I didn't get it
15 correctly, is that the RICO claim is very weak. I didn't hear
16 much about the California consumer claim. Did I get the right
17 impression from both of those conclusions that the RICO claim
18 was weak primarily because of the lack of the collusive factor,
19 I guess? Never having tried a RICO case, I don't know.

20 MS. CLARK-WEINTRAUB: Uh-huh.

21 THE COURT: And I didn't see much addressed by the
22 California consumer claim. Maybe I missed it. But that was
23 kind of my two impressions about the merits of the legal theory
24 of the case that would be submitted.

25 MS. CLARK-WEINTRAUB: Yes, Your Honor. I think their

1 RICO claim did have issues, and --

2 THE COURT: That's another way of saying it's weak?
3 You can be frank with me. I'm trying to -- yes. Go ahead.

4 MS. CLARK-WEINTRAUB: There were substantial risks to
5 our prevailing on the RICO claims, Your Honor. And, you know,
6 as we said in our papers, quite candidly, and we cited all the
7 decisions, as I said, there were all of these additional
8 property inspection fee cases brought against other lenders
9 after the initial successes in our case, and in those cases the
10 RICO claims were dismissed for failure to plead, you know, a
11 fraudulent purpose. So, yes, the RICO claim was in jeopardy,
12 let me put it that way.

13 In terms of the California claim, again, that was only
14 a state law class.

15 THE COURT: Right.

16 MS. CLARK-WEINTRAUB: So now you're going from a
17 nationwide situation to a statewide situation. You know, Wells
18 Fargo, in earlier stages of the litigation, had made, you know,
19 very vociferous arguments against the California UCL claim,
20 which Your Honor rejected. In particular you may recall they
21 cited the Walker and there was one other case whose name is
22 escaping me at the moment, but those were appellate cases in
23 California state court which upheld the rights of servicers in
24 broad terms to inspect delinquent properties.

25 Now, obviously, we made arguments to Your Honor that

1 those cases were distinguishable, the claims were far broader
2 than the claims we were bringing here. Your Honor agreed with
3 our assessment of those cases, but that doesn't mean that, you
4 know, there wasn't jeopardy on appeal, obviously.

5 And, you know, really the whole case came down to when
6 was it reasonable for Wells Fargo to conduct a property
7 inspection and did they have an incentive to inspect more than
8 was reasonably necessary to protect the lender's interest in the
9 property, and they argued, and the evidence as it came in gave
10 them plenty of ammunition to argue, that they did not have any
11 incentive.

12 They did not mark up the fees, unlike other mortgage
13 servicers in the industry. You know, there was, you know,
14 minimal evidence that they would make money on the float. If
15 Your Honor may recall, that was one of our theories, that they
16 made money on the float, so they collected the fees from the
17 borrower and then, you know, there was a period of time between
18 that collection and when they had to pay the vendor.

19 Their witnesses, Mr. Schares, who I mentioned earlier,
20 among them, testified adamantly that that was impossible because
21 Wells Fargo would immediately pay its vendors within -- I forget
22 the precise number of days, but maybe 10, 15 days of getting a
23 bill, whereas the evidence seemed to show that borrowers were
24 not very timely in paying property inspection fees if they paid
25 them at all. So even with respect to, you know, certain aspects

1 of the UCL claim, there were issues as well.

2 THE COURT: How long did you anticipate, you and your
3 co-counsel, that the trial would last?

4 MS. CLARK-WEINTRAUB: Probably ten days to two weeks,
5 I would have guessed. I mean, obviously, RICO is a pretty
6 complicated statute, if we had managed to hang on to it through
7 summary judgment, to explain it to a jury.

8 That was another thing. That was not going to be an
9 easy thing to do, to explain RICO, racketeering. Whether or not
10 a jury would believe that, you know, a bank such as Wells Fargo
11 would be engaged in, quote-unquote, racketeering activity, you
12 know, that was also, obviously, a risk that we faced.

13 THE COURT: And how many witnesses did you have in
14 mind that you'd need to prove up your case?

15 MS. CLARK-WEINTRAUB: Well, a lot of the case, I
16 think, would have turned on the expert testimony, in terms of
17 the analysis of the data especially. I think in terms of fact
18 witnesses, probably, just guessing, between five and ten fact
19 witnesses potentially. And then there would be experts; experts
20 on mortgage servicing, experts on the data analysis. And, you
21 know, if the case had gone on, I think there probably would have
22 needed to be some sort of a forensic accountant to help us trace
23 through the payments, if ultimately we believed that was even
24 possible at the end of the day.

25 THE COURT: One of the things you mentioned in the

1 papers was the difficulty of explaining this process to a jury,
2 or, for that matter, the judge, is complex --

3 MS. CLARK-WEINTRAUB: Uh-huh.

4 THE COURT: -- and therefore that would seem to weigh
5 in favor of the settlement, and yet the other point is that you
6 reviewed all of the complex documents.

7 MS. CLARK-WEINTRAUB: We did. Other than the data,
8 obviously. I mean, the lawyers did not, you know, parse through
9 the data.

10 THE COURT: Right.

11 MS. CLARK-WEINTRAUB: I mean, I took the deposition of
12 Mr. Rittenhouse on the data, and it was, you know, hard to do.

13 THE COURT: Okay.

14 MS. CLARK-WEINTRAUB: I mean, it was hard to follow
15 through on everything. You know, obviously, the witnesses --
16 and I'm not saying they weren't trying to be helpful. I think
17 they were forthright, the witnesses from Wells Fargo, in their
18 testimony, but they, you know, speak sometimes as lawyers do
19 too, you speak in the jargon of your profession, and you have to
20 get behind that.

21 THE COURT: Right.

22 MS. CLARK-WEINTRAUB: And it's not easy.

23 THE COURT: Okay. Do you have anything else you want
24 to --

25 MS. CLARK-WEINTRAUB: Well, I don't know if Your Honor

1 wants me to go through the Van Horn factors. I mean, I think
2 we've talked about a lot of this now, and, obviously, it's all
3 set forth in our papers, why we believe the --

4 THE COURT: When you say the Van Horn factors, refresh
5 my -- I know it's Van Horn vs. Trickey, but I don't remember
6 what the factors are.

7 MS. CLARK-WEINTRAUB: Yes, Your Honor. Well, you
8 know, balancing or weighing the merits of the case against the
9 terms of the settlement, I think we've talked about that already
10 and why the plaintiffs --

11 THE COURT: Right.

12 MS. CLARK-WEINTRAUB: -- believe that this was a
13 beneficial settlement for the class. That's the first and,
14 according to the Eighth Circuit, the most important of the
15 Van Horn factors.

16 The second one is the defendants' financial condition,
17 which is, we believe, a neutral factor here because, obviously,
18 Wells Fargo could have paid more money, but also they could have
19 continued to litigate and they could have continued to litigate
20 through summary judgment, through trial, through appeal, and so
21 that obviously --

22 THE COURT: Right.

23 MS. CLARK-WEINTRAUB: -- increases the expense and the
24 risk of the litigation.

25 The third factor we just discussed, I think, which is

1 the complexity and expense of further litigation. As I said a
2 little bit earlier, at the point the settlement was reached
3 while merits discovery was coming to a close, we were about to
4 get into the expert discovery phase, and, obviously, experts are
5 very expensive --

6 THE COURT: Right.

7 MS. CLARK-WEINTRAUB: -- in analyzing the data.

8 THE COURT: You know, the only experience that I've
9 had that comes close to me or any other layperson understanding
10 this is I had an insider trading case in, of all places, the
11 Southern District of Iowa. The Government -- it was a criminal
12 case. The Government brought an expert from the University of
13 Michigan School of Business to try to explain to the jury what
14 an option was -- and the judge what an option was.

15 So in this case would your side, as well as the Wells
16 Fargo side, would you put on experts that would show the jury
17 what -- that the plaintiff was always in paid status and yet was
18 dinged with erroneous appraisal fees? What's the expert testify
19 here for the plaintiffs?

20 MS. CLARK-WEINTRAUB: Well, I think there would have
21 been a couple of -- at least several issues that experts would
22 have testified on. They would have testified on what were the
23 industry practices with respect -- what practices had mortgage
24 servicers in general followed with respect to inspecting
25 properties and assessing their costs.

1 THE COURT: That's what your side puts on?

2 MS. CLARK-WEINTRAUB: I think both sides would put
3 that on.

4 THE COURT: Both sides. What the general industry
5 practice is --

6 MS. CLARK-WEINTRAUB: Practices were.

7 THE COURT: -- about being secure with your
8 collateral?

9 MS. CLARK-WEINTRAUB: Right. What the GSE guidelines
10 would require, what the investor -- you know, private investor
11 guidelines, you know, because all these mortgages now are sold
12 into, you know, MBS certificates. You know, they're sliced up
13 and sold and so, you know, some are sold to these, you know,
14 GSEs like Fannie Mae, Freddie Mac. Others are held by private
15 investors. So, you know, what the guidelines were that Wells
16 Fargo was operating under or thought it was operating under,
17 there would have been expert testimony on that.

18 There were even conflicting merits expert reports in
19 the record at the time the settlement was struck between
20 Mr. Hamm and our expert, Christopher Wyatt, concerning, you
21 know, what the guidelines required and what was the usual
22 practice in the industry, so that was a point of contention
23 between the experts. And, obviously, a battle of the experts,
24 you know, the jury can go either way.

25 As I said, I'm pretty sure if the case had proceeded

1 we would have had to have had some sort of a forensic
2 accountant, you know, piece through the records and trace
3 through payments to show, you know, what codes -- and a lot of
4 this testimony was going to be about coding, right, that
5 appeared in this data, you know, because there were various
6 codes and accounts that the fees flow through in order to be
7 paid on Wells Fargo's system and to be posted to the borrower's
8 mortgage account.

9 So it was going to be a lot of tedious testimony about
10 coding from experts, and we would have had an expert that would
11 have added up all the charges and said this is what we think the
12 damages are, and I'm sure Wells Fargo would have had their own
13 expert to add it up, and they would have come to a much lower
14 number.

15 I mean, even in the mediation, you know, how much the
16 charges actually added up to was a point of contention between
17 the parties because Wells Fargo had legal arguments it was
18 making as to why, even if a payment had been post -- I'm
19 sorry -- even if a fee had been assessed to the account, for
20 example, if it had been rolled up in a loan modification, Wells
21 Fargo argued that, you know, the borrower had ratified the fee
22 and therefore they would no longer have a claim to get that fee
23 back. So, you know, those kinds of arguments, you know,
24 obviously reduce the damages number, sometimes substantially.

25 So there would have been, you know, expert testimony

1 about all of those issues from both sides, and probably the
2 expert testimony would have dominated the trial, because I think
3 from a factual standpoint there weren't a lot of disputes about
4 what Wells Fargo actually did at certain points in time. I
5 mean, it had its policies and its procedures, and it implemented
6 them. The issue is, you know, again, were they unreasonable,
7 did they rise to the level of, you know, a RICO violation.

8 THE COURT: Okay.

9 MS. CLARK-WEINTRAUB: That was the point of
10 contention.

11 THE COURT: Ms. Clark-Weintraub, here's what I would
12 suggest. On the fourth factor, which as I understand it is the
13 amount of opposition to the settlement --

14 MS. CLARK-WEINTRAUB: Yes.

15 THE COURT: -- which you've already recited in the
16 record here we have 13 objectors, 219 excluded people, and I
17 want to hear from them because I think --

18 MS. CLARK-WEINTRAUB: Uh-huh.

19 THE COURT: -- that's a necessary part of the process,
20 but why don't we not address that right now --

21 MS. CLARK-WEINTRAUB: Okay.

22 THE COURT: -- until I hear from the objectors. Why
23 don't I hear from Wells Fargo and what they say about the
24 proposed settlement, and then you can come back once I hear from
25 the objectors.

1 MS. CLARK-WEINTRAUB: Okay.

2 THE COURT: Because I do have some other questions.

3 MS. CLARK-WEINTRAUB: Sure.

4 THE COURT: Mr. Lonergan, did you want to proceed or
5 is it Ms. Snavelly Saelao?

6 MR. LONERGAN: I'll be addressing the Court, Your
7 Honor. Thank you.

8 THE COURT: Thank you.

9 MR. LONERGAN: I recognize that the parties have
10 submitted voluminous filings for the Court's consideration, and,
11 of course, class counsel has given, I think, a very
12 comprehensive overview of the settlement, the litigation, and
13 the various factors, so I will try not to repeat anything that I
14 think the Court has read or heard, but there are a couple of
15 points I think are worth emphasis from our perspective, Your
16 Honor.

17 First, and I think foremost, because it does directly
18 relate to the settlement's approval process, it is Wells Fargo
19 Bank's contention now and has always been that it has very
20 strong defenses to this lawsuit, both on the merits and with
21 respect to the maintenance of class certification.

22 Your Honor, I think correctly, summarized the gist of
23 the lawsuit. This is about property inspections that Wells
24 Fargo indisputably ordered when loans were in default. As the
25 Court knows from this hearing and other hearings we've had in

1 front of Your Honor, the basic practice is Wells Fargo would go
2 out and order inspections from a third party. Typically those
3 were 15 or 20 dollars. It passed through that charge to
4 borrowers pursuant to the contractual authorization, did not
5 mark them up. This is not a mark-up case.

6 Probably the best source of information if the Court
7 wants to look at what the bank's defense is and would have been
8 if this case went to trial in terms of why this is a perfectly
9 legitimate, reasonable, universally followed practice among
10 mortgage servicers would be the expert report of Dr. Hamm that
11 has been mentioned several times, and that's found in Docket
12 158-14.

13 It's lengthy. I think it's very helpful, and I won't
14 go through it in detail, but Dr. Hamm sets forth how, why
15 servicers do this, why you go out and inspect a property when
16 the loan is delinquent.

17 He goes through the reasons for it; the risk
18 avoidance, the guidelines that are published by
19 government-sponsored enterprises like Fannie and Freddie that
20 mandate this, the requirements of private servicers that mandate
21 this. He goes through the serious risk of loss to servicers if
22 they don't inspect properties.

23 He goes through some of the local ordinances and laws
24 throughout the country, many of which have sprung up since the
25 great recession started in 2008 that legally obligate servicers

1 to do what was done here to protect communities from blight. It
2 actually is not only very --

3 THE COURT: My recollection is that there are also
4 government, city, county, state demands on mortgagers,
5 mortgagees to secure their property?

6 MR. LONERGAN: Absolutely. They've been sued.

7 THE COURT: Right.

8 MR. LONERGAN: Municipalities have literally brought
9 lawsuits against servicers for not inspecting enough. And
10 Ms. Clark-Weintraub is absolutely correct that explaining this
11 to the jury and why this is so important and everyone does this
12 and must do this --

13 THE COURT: That's one of your primary defenses?

14 MR. LONERGAN: Absolutely.

15 THE COURT: Okay.

16 MR. LONERGAN: And it would have been at trial.

17 THE COURT: Right.

18 MR. LONERGAN: And we continue to believe that the
19 bank's practices were in all respects appropriate and lawful.

20 It's also true, as Ms. Clark-Weintraub pointed out,
21 that the bank contends and would contend that ordering
22 inspections, far from being a profit center from the bank, is a
23 huge loss item; that the basic practice is for as many property
24 inspections as are ordered and paid for out of pocket by Wells
25 Fargo and charged to the borrower, substantial percentages of

1 them are never paid, borrower never pays for them, and often, as
2 the data show, the loan goes into default and it's just a loss
3 for Wells Fargo.

4 So it's not a case that, I think, from our
5 perspective, there was any meaningful opportunity of ever
6 convincing a jury that this was a profit center. This was a
7 loss for Wells Fargo. It had every incentive to not order
8 property inspections but was legally and contractually required
9 to do that.

10 I won't go through specific analysis of the claims.
11 Your Honor has heard from us about that before in connection
12 with past motions. But I will point out something that I think
13 is highlighted in both sides' papers. There have been, I think,
14 some significant developments recently, meaning last year, 2015,
15 that cast considerable doubt on the continued viability of these
16 claims.

17 Your Honor asked a question about whether other
18 servicers were involved in similar litigation. I think class
19 counsel are correct this is probably the first filed suit, but
20 it's not the only lawsuit, and, as we point out in our papers,
21 there was a case against Bank of America, very similar property
22 inspection case, that last year the RICO claim was dismissed
23 because the court concluded, and concluded correctly, that you
24 don't have a RICO -- there's no common purpose between the
25 servicer that passes on charges to the borrower and these

1 third-party vendors that inspect properties for a fee. There's
2 no common purpose to support a RICO violation for defrauding or
3 misrepresenting charges, so that claim was dismissed.

4 We think there was certainly a significant possibility
5 that given that authority Your Honor would reconsider that
6 issue, and we would urge -- would have urged that result here.

7 Further, with respect to class certification, Your
8 Honor will recall our position on that when that was argued was
9 that whether or not a particular inspection was or was not
10 reasonably necessary to make sure the property continues to be
11 in good condition is inherently an individual issue. You cannot
12 decide across the board for 2.7 million loans and millions of
13 inspections every one of them was, you know, unreasonable or
14 reasonable.

15 Confirming, I think, our view on that, just last year
16 in some litigation that we're familiar with in the Northern
17 District of California, Judge Yvonne Gonzalez Rogers denied
18 class certification of two almost identical property inspection
19 class action lawsuits against Chase and Citibank, and that is
20 certainly something that we would have brought to the Court's
21 attention and urged Your Honor to revisit certification, as
22 you're entitled to do at any point up to judgment.

23 THE COURT: Is that on appeal?

24 MR. LONERGAN: It is not on appeal at this point.
25 Maybe at some point, but not now. Those rulings were relatively

1 recent, I believe in December.

2 THE COURT: Okay.

3 MR. LONERGAN: Also illustrating, I think, the risk
4 here, the focus, as Ms. Clark-Weintraub points out, particularly
5 late in the case, had to do with data and damages. There are --
6 the parties exchanged a lot of information about data and
7 damages, and there were -- you know, had very different
8 viewpoints about how much -- assuming liability, how much could
9 be made out by the plaintiffs in terms of a damage case.

10 There was a full disclosure of the entire loan-level
11 database for all these borrowers to class counsel so that they
12 could analyze it along with their experts. The parties
13 exchanged positions over a continuum -- a considerable period of
14 time about their different positions. I won't go through all of
15 them, but there were a lot of disputes about what actually could
16 be damage that could be recovered from this.

17 Ms. Clark-Weintraub has pointed out the difference
18 between initial inspections and subsequent. It is certainly
19 Wells Fargo's contention that the initial -- an initial
20 inspection when a loan is in default, the idea that we can't
21 send someone to drive out to the property and see if it's in
22 good condition even one time is something that we would have
23 strenuously disputed, and there's a lot in the data about
24 initial versus subsequent.

25 The Court has heard something about loan

1 modifications. Just to make clear, a lot of these loans,
2 because the borrowers were in default -- and I don't have the
3 percentage at the fingertips, but it's significant -- were
4 modified. Wells Fargo agreed to the borrower's request to write
5 down the loan balance or adjust the interest rate.

6 As part of that process, and understandably so, I
7 think, the bank enters into an agreement with the borrower that
8 says, okay, you and we agree that on this date your loan balance
9 is X, and if there's a property inspection fee that's rolled
10 into there, it's in there, and there's an explicit waiver of any
11 claims about that balance.

12 So it certainly would have been our contention at
13 trial -- I'm sorry. The Court --

14 THE COURT: No. I was just going to say but those
15 people you've described, and I'll take it as being active loans
16 and paid in full, they're not going to get paid for that.
17 They've waived any claim, haven't they? They're not going to
18 get paid?

19 MR. LONERGAN: They will get paid for those.

20 THE COURT: They will get paid even though they, when
21 you say, modified the loan? Oh, okay. I didn't think they'd
22 get paid so that's my misunderstanding.

23 MR. LONERGAN: I'm not explaining it clearly. Let me
24 take a shot at it.

25 THE COURT: Yes.

1 MR. LONERGAN: So an example would be a borrower is --
2 their property's inspected, they're assessed a \$15 fee.

3 THE COURT: Right.

4 MR. LONERGAN: They don't pay it, as many of them
5 don't. Somewhere down the road loan modification discussions
6 begin, and the bank agrees to the customer's request to write
7 down the loan balance, say from 300,000 to 250 or whatever it
8 may be, and on a certain date the parties agree, "This is the
9 balance you owe, 250. This will be your payment schedule going
10 forward."

11 THE COURT: Right.

12 MR. LONERGAN: Arguably, the unpaid property
13 inspection fee has been rolled in there, it's part of that 250.
14 The written agreement between the parties says, "We agree this
15 is the balance owing on this date."

16 THE COURT: Right.

17 MR. LONERGAN: Had this case gone to trial, we would
18 have stood in front of a jury and said all of those individual
19 fees that were rolled in, they can't be challenged. Because we
20 agreed to modify and write down the loan --

21 THE COURT: Okay.

22 MR. LONERGAN: -- they are bound by that. They cannot
23 now contest that fee in the context of this class action, so
24 they have to be carved out. As part of the settlement, they're
25 not carved out.

1 THE COURT: Right. It seems to me that aren't they
2 getting a windfall?

3 MR. LONERGAN: They're not getting a windfall.
4 They're getting compensation that, you know, it's not the most
5 compensation they could get if they win every argument, but
6 they're getting entitlement to be compensated for that fee, even
7 though we had a defense we would have raised.

8 THE COURT: Okay. I apologize for interrupting. I
9 wanted to make -- I didn't understand the modified loan and how
10 they'd still get paid, but you've explained it now, I think.

11 MR. LONERGAN: So that would have been a contentious
12 issue with respect to the damages sought on behalf of the class.
13 There were contentious issues about waivers. The data show many
14 different credits but don't necessarily clearly articulate every
15 case why there's a credit to a balance. We contended that many
16 of them are waivers; Plaintiffs' experts contend otherwise.

17 And certainly the biggest dispute is over whether
18 dollar amounts were paid, whether they were paid by customers or
19 whether, particularly with respect to loans that already went
20 through foreclosure, the records might reflect a credit, but
21 there was a big dispute about whether that was actually a
22 customer payment or it was the third-party investor or a GSE
23 payment.

24 So the damage issues in this case were very, very --
25 would have been very, very contentious. And certainly I hear

1 class counsel's estimate of the damages they thought they'd be
2 able to recover. I'm sure it will come as no surprise to the
3 Court that the bank's contention would have been it was far less
4 and therefore that the settlement is --

5 THE COURT: The figure that appeared, Mr. Lonergan,
6 the figure that appeared, was that their figure about what the
7 maximum exposure was?

8 MR. LONERGAN: Yes.

9 THE COURT: Did you have any of your own?

10 MR. LONERGAN: Well, we had different alternatives
11 depending on certain legal arguments, but fair to say that at
12 trial Wells Fargo would have contended that any damages
13 recoverable by the class would have been far less than 100
14 million, far less.

15 THE COURT: Okay.

16 MR. LONERGAN: A couple of other -- those were the
17 main points I wanted to make as to why we have always believed
18 that what the bank did was legitimate and defensible and it
19 could be defended and why the settlement that was reached is
20 eminently fair and reasonable to members of the class.

21 There were a couple points that came up in Your
22 Honor's conversation with class counsel that I will address
23 because they seem like they are of some interest with the Court.

24 I agree with class counsel that the likely length of
25 trial would probably have been, from our perspective, in the ten

1 court day range. It is true that the presentation would have
2 included experts from both sides to talk about the process
3 because I think, you know, servicing of mortgage loans and why
4 banks go out routinely and inspect properties, how important it
5 is to reducing risk and urban blight and everything else, is
6 beyond the common experience of most jurors who aren't in that
7 line of work, so we would --

8 THE COURT: Especially if they've seen The Big Short.

9 MR. LONERGAN: Fair enough, Your Honor.

10 THE COURT: Yeah.

11 MR. LONERGAN: So we would definitely have done that
12 to try to take the complex but important process and make it --
13 present it in understandable terms.

14 But we would have done something else that I want to
15 mention, and I believe I tried to explain this to the Court at
16 class certification. This debate that raged on during this case
17 about whether or not it's necessary to conduct a property
18 inspection is really happening in the abstract. We would have
19 brought in witnesses to try to make it real and deal with real
20 people and real loans.

21 We would have brought in the folks who managed this
22 process from Wells Fargo or property inspectors or maybe even
23 actual homeowners that are in the class to illustrate to the
24 jury how quickly a loan can change; how you can have a loan
25 that's in default, you go inspect it one day and it looks like

1 it's in good condition and it's occupied and all that, and you
2 go out there 30 or 35 days later and it's vacant and all the
3 copper pipes are ripped out of the house and there are squatters
4 living in the house and everybody on the block is afraid to
5 drive by the house anymore.

6 This case and this trial would have needed a real-life
7 illustration of what has been going on out there over the class
8 period in the real world that drives the need for inspections
9 separate and apart from GSE regulations and loan servicing
10 standards, and we would have endeavored, with Your Honor's
11 permission, to present that evidence to the trier of fact.

12 The last point I would make has to do with the fate of
13 any unclaimed funds. I agree with class counsel this isn't
14 really what I think class action lawyers think of as a
15 traditional cy pres case.

16 This is not a case where we know there's a big loss
17 that was claimed but a lot of these people can't be found so we
18 have to figure out what to do with the money. This money is
19 going to be directly distributed to people that we have their
20 addresses, and some of them have to submit claims and others
21 don't.

22 THE COURT: Right.

23 MR. LONERGAN: Checks are going to go out, and then
24 there's going to be some amount of money from checks that are
25 not cashed. We know that. Then there's going to be a second

1 distribution to these people to get that money out there to go
2 directly to the people that were affected by the process, and
3 only after that second distribution, where there will probably
4 be some remaining amount of money which will not be significant,
5 I think, in the grand scheme of the total pot here, then and
6 only then will that final residue not go back to Wells Fargo --
7 that was something that class counsel were not willing to agree
8 to -- but will go to -- it's not just the United Way; it was
9 targeted to financial education programs of United Way.

10 And if you look at Judge Bucklo's article and her
11 discussion of, you know, cy pres recipients, I am very
12 comfortable that the agreed upon designation fits this class of
13 people; these people, they're groups of folks who are not able
14 to pay their mortgage, who went in default, who had, you know,
15 repeated inspections, and this is -- these programs by the
16 United Way are intentionally designed to help consumers like
17 that avoid trouble in the future and stay out of similar
18 situations.

19 So we feel, and I think class counsel agreed, that's
20 why it's in the settlement agreement, that this is a recipient
21 for what will be a small percentage of money that really is
22 reasonably tailored to the claims in this litigation.

23 THE COURT: Mr. Lonergan, I want to know, why on the
24 third group, which I'll call the post-sale --

25 MR. LONERGAN: Uh-huh.

1 THE COURT: -- doesn't Wells Fargo have documentation
2 about the fees that have been paid by that group and why do we
3 need the claim form? I mean, it's probably obvious, but I don't
4 understand it, so --

5 MR. LONERGAN: Well, it's probably not obvious. It is
6 complex, and I'll try to explain it, Your Honor. And this was
7 actually part and parcel -- it was a point of considerable
8 discussion between the parties.

9 The essential thing that I think is helpful to
10 understand that is initially when a property goes into default
11 there is a fee charged and it's in a certain category called Fee
12 Code 4.

13 THE COURT: Called what?

14 MR. LONERGAN: Fee Code 4. It's just a code within
15 the servicing system.

16 THE COURT: Okay.

17 MR. LONERGAN: And it's a separately designated
18 category where you can see the charge assessed, and if the
19 customer comes in and pays it or sends in a check, you can see
20 that it's paid.

21 But as the loan gets further and further into
22 delinquency, there is a recognition by the bank internally that,
23 you know, it's looking like this customer is not likely to bring
24 their loan current, meaning they're not likely to pay these
25 property inspection fees, so at that point the fees are then

1 assessed to a different category called corporate advance. Your
2 Honor may have seen that in the papers.

3 A corporate advance account doesn't just include
4 property inspection charges; it includes many other types of
5 charges that typically would get assessed to a seriously
6 delinquent borrower. The charges are all commingled in the
7 system, so you might have a \$15 property inspection fee and an
8 attorney fee charge and a winterizing charge or whatever it is.
9 It all goes into a bucket and it gets commingled.

10 Once it gets commingled, it becomes very difficult to
11 look into the records and see where there might have been
12 credits to the account, and therefore it becomes very difficult,
13 for the seriously delinquent and foreclosed borrowers to say,
14 yes, I think they paid that \$15 charge, or, no, they didn't.
15 That would have been -- was and would have been a very
16 contentious issue between the parties.

17 In addition, especially for foreclosed borrowers, even
18 where there were credits to these charges, a lot of those were
19 done after the foreclosure happened, not from a borrower payment
20 but from the investor coming in or Fannie Mae or Freddie. So
21 even where there's credits, you can't tell if the borrower paid
22 it or not.

23 And anecdotally, we believe -- and I don't want to
24 speak for class counsel, but I don't think they dispute this --
25 that for foreclosed borrowers, a very, very, very small

1 percentage of these people ever came forward and paid it. The
2 loan just went delinquent and they were never paid, so we would
3 have --

4 THE COURT: So it's been commingled is the reason we
5 have a claim form because the burden is on the class member to
6 show affirmatively that they paid, even if they're now
7 foreclosed on, short sale or otherwise?

8 MR. LONERGAN: That's correct.

9 THE COURT: Okay.

10 MR. LONERGAN: Unless Your Honor has any further
11 questions, that would be my --

12 THE COURT: Mr. Lonergan, I don't mean by this
13 question to suggest that, you know, these -- I get very worried
14 because I think that the Congress and Supreme Court, in that
15 rule enabling, permitting class actions -- the public, in my
16 view, is too cynical about this. They think that there's not a
17 basis for it. But I'm going to assume that none of you lawyers
18 here in the courtroom have ever gone to verdict on a class
19 action.

20 MR. LONERGAN: That is not correct. I have, Your
21 Honor.

22 THE COURT: Okay. And I'm not being critical, and I
23 want to hear from you, Mr. Lonergan, because I've never had a
24 lawyer that went to verdict on one of these. I've probably had
25 four or five approvals. And that's not unusual. I think the

1 status from the FJC tell us that 2 percent of cases go to
2 verdict anyway.

3 So but you can speak, having gone to verdict,
4 Mr. Lonergan, in a way that, perhaps, I can better understand
5 the complexity aspect, the Van Horn, the third factor.

6 Tell me about your work on this because I've never had
7 a lawyer like you before that's gone to verdict on these cases
8 because I assume they have a tenor all of their own that perhaps
9 if you've gone through it you understand it better than someone
10 who hasn't. Is that right or not?

11 MR. LONERGAN: Well, I think I have some
12 understanding.

13 THE COURT: Okay.

14 MR. LONERGAN: I've taken three class actions to a
15 verdict.

16 THE COURT: All right.

17 MR. LONERGAN: They are complicated, complex cases to
18 try. The accounting issues, as is true in this case, are
19 frequently very, very complicated and difficult and contentious.
20 This case would definitely have been of that category.

21 To state the obvious, there's substantial risk for a
22 defendant. Your Honor knows that.

23 THE COURT: Okay.

24 MR. LONERGAN: Class counsel know that. That's why a
25 lot of these settle. But they can be won from a defense

1 standpoint.

2 THE COURT: Okay.

3 MR. LONERGAN: And I'm fortunate enough, knock on
4 wood, the ones that I've been involved in, the client has been
5 successful.

6 THE COURT: Can they be won from the plaintiffs'
7 standpoint?

8 MR. LONERGAN: Sure. Sure, they can. That's why
9 we're settling the case.

10 But ultimately, my experience, you know, I think
11 jurors are common sense folks, and I think when -- my experience
12 is when a trial begins, there seems to be a feeling from jurors,
13 and maybe even from judges, "This is a class action. There must
14 be something here. It's important. There's a lot of money at
15 stake."

16 THE COURT: Right.

17 MR. LONERGAN: "This case wouldn't have gotten that
18 far." And that's a natural inclination for all of us.

19 But I think at the end of the day, even in a class
20 action, when you go through and explain, you know, what the
21 dispute is, I think jurors are open-minded and fair and they'll
22 judge it on the merits. And I think that the juries here in
23 Des Moines would have done that in this case had it gone to
24 trial, and we felt confident, but we recognize the risk, and we
25 think this is a fair resolution.

1 THE COURT: Okay. Anything else you want to tell me?

2 MR. LONERGAN: Nothing that I can think of, Your
3 Honor.

4 THE COURT: All right. Thanks very much.

5 MR. LONERGAN: Thank you.

6 THE COURT: The only lawyer I saw who filed
7 representing one of the objectors, Mr. Harding, I don't see him
8 here.

9 But you objectors know who you are and I don't. So I
10 want to give you every opportunity to tell me about your
11 objections. Even if your filings were not timely, I want to
12 hear from you, so speak now or -- you know, come forward, and
13 you can tell the Court and the lawyers your objections to this
14 so they can hear it in open court. You're entitled to that.
15 You shouldn't feel intimidated by the process.

16 Yes, sir. Please come forward. And you can use the
17 microphone there, and why don't you begin, for our reporter and
18 for our record, just state your name.

19 MR. NJEMA: Yes. My name is Kenneth Njema. I have a
20 matter in Minnesota District Court. It's Njema vs. Wells Fargo.
21 It is a matter concerning trespass and other claims in a matter
22 too, but the trespass has some value to somebody.

23 THE COURT: And for the lawyers, because they
24 should -- they perhaps they don't know, you made a filing just
25 this morning, didn't you?

1 MR. NJEMA: Yes, I did.

2 THE COURT: It appeared on my CM/ECF.

3 MR. NJEMA: Yes.

4 THE COURT: Well, the lawyers probably don't know
5 that. So does your filing set out in general the sum and
6 substance of what you're going to tell the Court and the
7 lawyers?

8 MR. NJEMA: I'll try my best.

9 THE COURT: I'm sorry?

10 MR. NJEMA: I'll try my level best.

11 THE COURT: All right. Okay.

12 MR. NJEMA: The reason I'm objecting to the proposed
13 settlement is not because I don't think there should be a
14 settlement but because I think that because -- because I think
15 that the settlement terms are unfair at this time.

16 We're talking about property inspections, a lot of
17 them which were unreasonable inspections, which a lot of times
18 ended up, you know, constituting trespass. And so we do -- I do
19 agree with Wells Fargo counsel that I agree that it's -- the
20 bank is entitled to making the inspections to ensure there is no
21 vandalism and to make sure that they're protecting their
22 interest, but my contention is a lot of times the way they
23 handled the inspections.

24 The way they conducted the inspections was a problem
25 because a lot of times before they conducted the inspections,

1 their vendor would send out a notice asking you to call him to
2 let him know that whether you live in that property or not, and
3 so a lot of times I ended up calling and letting them know that
4 I'm still living at the property, but as a matter of fact, there
5 are times when I would call the bank and still call the banker,
6 and then a week later, they would come to the property and lock
7 you out. So the problem is the property inspections, the way
8 they were conducted, not the public is contesting whether the
9 bank has the rights to do this.

10 One other reason for the objection is the amount set
11 aside right now for taking care of the class members. In my
12 opinion, it's not an adequate amount because like, for example,
13 in the loan that I'm talking about here in Minnesota, the
14 average fees come to around \$200 per inspection.

15 Now, the money that's set aside for this settlement
16 fund, if you divide it up among the 2.7 class members, you know,
17 after deducting the attorney fees and, you know, claim
18 administrator fees, they're probably -- there's probably maybe 5
19 to 10 dollars left for each class member.

20 And, now, we have an agreement here today that each
21 inspection was at minimum \$15, so if people are trying to get
22 some kind of remedy from this class action, obviously, they're
23 not going to be able to get a remedy because the money they
24 would get back from the class action is not even enough to cover
25 the fee that they were charged in the first place.

1 And so what I did today, what I've been trying to
2 do -- and I understand that, you know, it doesn't help the late
3 issue at this point -- is I'm trying to find a way to enjoin
4 trespass as a subclass in this class action lawsuit because like
5 the counsels here have agreed, this is probably the only class
6 action lawsuit that I'm aware of in the nature of today that --

7 THE COURT: Can I ask you a question? First of all,
8 how do I pronounce your last name?

9 MR. NJEMA: Njema.

10 THE COURT: My understanding is you have a pending
11 claim in the District of Minnesota, according to your filing and
12 what was told me earlier. Is that correct?

13 MR. NJEMA: Correct.

14 THE COURT: And is it against Wells Fargo?

15 MR. NJEMA: Yes, it is.

16 THE COURT: It alleges trespass?

17 MR. NJEMA: Yes.

18 THE COURT: Judge Schiltz has the case?

19 MR. NJEMA: Yeah. Because it's still there. It's
20 still pending. We're supposed to be going to trial, and I don't
21 have an attorney to handle this.

22 THE COURT: And you make reference in your filing
23 here -- and I'm on page 2 of your filing. You're not making any
24 claim on behalf of another person? You reference a Sonia
25 Shelton.

1 MR. NJEMA: Yeah. What I'm talking about is I --

2 THE COURT: Let me just confine your answer to that,
3 if you could. Are you making a claim on behalf of another
4 person?

5 MR. NJEMA: Yes. She's a class member.

6 THE COURT: Okay. You can't do that. Are you a
7 member of the bar?

8 MR. NJEMA: No, I'm not.

9 THE COURT: Okay. You can make your own claim --

10 MR. NJEMA: Okay.

11 THE COURT: -- but I don't think the law permits me to
12 recognize you as a representative of another person, okay?

13 MR. NJEMA: Okay.

14 THE COURT: You understand that, don't you?

15 MR. NJEMA: Yes, I do.

16 THE COURT: Okay. Did you want to tell me anything
17 more about your claim here? Because I don't think you're a
18 member of this class, unless I have missed something. Are you a
19 member of this class?

20 MR. NJEMA: Yes, I am. Yes.

21 THE COURT: Okay. Did you hold a mortgage between the
22 2004 and 2013 -- I may have the dates wrong -- time period?

23 MR. NJEMA: Yes, I did.

24 THE COURT: Okay. And were you sent a late or a
25 drive-by appraisal charge?

1 MR. NJEMA: Yes. Yes, I do. Actually, I have it.

2 THE COURT: And so you'll likely be paid because is
3 your loan foreclosed on or is your loan an active one or what is
4 your loan?

5 MR. NJEMA: It's foreclosed on right now.

6 THE COURT: I'm sorry?

7 MR. NJEMA: Foreclosed on.

8 THE COURT: Foreclosed on. So you may get paid. Do
9 you understand that?

10 MR. NJEMA: Okay. Yes, I do.

11 THE COURT: Okay. Tell me any other objections you
12 have to the settlement because I'll treat your filing here --
13 and I'll address those in my order either rejecting the
14 settlement or approving it, but I want to make certain that you
15 feel that you've been fully heard on any other bases. So if
16 there's something beyond what you've submitted in writing,
17 please tell me that.

18 MR. NJEMA: That's it. There's nothing else.

19 THE COURT: All right. Thanks so much.

20 MR. NJEMA: Thank you.

21 THE COURT: Ms. Clark-Weintraub or Mr. Lonergan, I'm
22 assuming that you don't have any examination or questions of the
23 objector, but if you do, I certainly want to give you the
24 opportunity to examine.

25 MR. LONERGAN: None from Wells Fargo, Your Honor.

1 MS. CLARK-WEINTRAUB: No, Your Honor.

2 THE COURT: All right. Are there any other objectors
3 here that want to be heard?

4 No? Okay.

5 Ladies and gentlemen, we're going to take a recess.
6 We'll reconvene at 20 minutes to 12.

7 (Recess at 11:25 a.m. until 11:40 a.m.)

8 THE COURT: Please be seated.

9 Counsel, I don't think there's any need to discuss the
10 fourth factor regarding the objectors based upon the record
11 we've had here today, but each of you may if you want to. I
12 don't see any necessity to have any additional record made on
13 it, but perhaps you do. That is the objectors and the
14 opposition to the settlement. I told you I'd reserve that once
15 I heard from the objectors, so --

16 MS. CLARK-WEINTRAUB: For the plaintiffs, Your Honor,
17 I don't think we have anything to add beyond what we've put
18 forth in our papers.

19 THE COURT: All right.

20 MS. CLARK-WEINTRAUB: I think Mr. Njema's arguments
21 here sort of repeat what's already been said.

22 THE COURT: All right.

23 MS. CLARK-WEINTRAUB: And the Court is aware he has a
24 transfer motion in front of the JPML, which we've opposed, by
25 the way.

1 THE COURT: All right.

2 MR. LONERGAN: And, Your Honor, Wells Fargo would
3 agree that we think it's adequately addressed in the papers.

4 THE COURT: Okay.

5 MR. LONERGAN: And I think in addition, the comments
6 made by both sides in oral argument in response to Your Honor's
7 questions address many of the same issues addressed already in
8 the objections.

9 THE COURT: All right. Thank you very much.

10 Now, Ms. Clark-Weintraub, judges are way out of touch
11 with what goes on in the private practice of the law, and so I
12 need some education here. I think years ago, I think the
13 Hensley case said when you look at a fee application, it should
14 be as if the client -- you should look at it the way the client
15 would approach the necessity of specifying what was done.

16 So here is the first problem I have, and I want you to
17 tell me -- perhaps I don't understand the law here with regard
18 to class actions. But generally, over seven years, I would
19 think an hourly rate would change, that it wouldn't remain the
20 same.

21 I have six different law firms here -- I'm sorry -- I
22 have seven different law firms here, beginning with Scott &
23 Scott, including Michael Reese, Kim Richman, Mario Pacella/Strom
24 Law Firm, Roxanne Barton Conlin, Howard Miles, and Todd Garber,
25 and I have hourly rates for those lawyers that are recited in

1 the papers that were submitted, but the hourly rate doesn't
2 change.

3 So perhaps there's a case or there's law that says,
4 well, you should treat the fairness of the fee request at the
5 time of the settlement or explain to me why the fee remains the
6 same from the outset of the lawsuit to today.

7 MS. CLARK-WEINTRAUB: Yes. The hourly rates probably
8 almost certainly changed over the years, but it is customary in
9 these cases --

10 THE COURT: I bet they didn't go down.

11 MS. CLARK-WEINTRAUB: Actually, I think mine may have
12 gone down when I switched firms, but I can't verify that.

13 THE COURT: Okay.

14 MS. CLARK-WEINTRAUB: But I think that it's customary
15 in these cases that the most recent hourly rate be used in order
16 to compensate counsel for the time, in part for the time value
17 of money. Obviously, the case has gone on for a long time.

18 I'm not sure if we cited authority on that issue in
19 our brief. I don't recall that we did, and so if Your Honor
20 wants us to provide additional authority on that point --

21 THE COURT: That would be helpful to me because --

22 MS. CLARK-WEINTRAUB: Okay.

23 THE COURT: -- I just don't understand why the fee,
24 the hourly rate, did not change. But, again, I've been out of
25 touch with the practice of law, and I like to think that I try

1 to understand that all this money doesn't go directly to you and
2 then to Mercedes-Benz, that you have to pay overhead and rent
3 and that kind of thing.

4 Then, Ms. Clark-Weintraub, could you break down for me
5 with some more specificity the expenses; the experts, what they
6 cost? That's going to be very helpful to me in understanding
7 what you did and what the other lawyers did.

8 MS. CLARK-WEINTRAUB: Yes, Your Honor. We can do
9 that, and we can submit something on that.

10 THE COURT: Okay.

11 MS. CLARK-WEINTRAUB: I think it's fair to say that
12 the vast majority of the expenses went to the experts --

13 THE COURT: Okay.

14 MS. CLARK-WEINTRAUB: -- expert expenses, and then
15 probably after that costs of, you know, document discovery and
16 travel. There was, obviously, numerous trips to and from
17 Des Moines for counsel --

18 THE COURT: Okay.

19 MS. CLARK-WEINTRAUB: -- to take depositions and/or to
20 appear in court. And I think that is the vast majority of the
21 expenses.

22 Each of the fee declarations, you know, contains a
23 breakdown of each firm's individual expense amount --

24 THE COURT: Right.

25 MS. CLARK-WEINTRAUB: -- and has categories of, you

1 know, expense. So, for example, looking at the amended
2 declaration of my partner, Daryl Scott, who is, just by way of
3 explanation, the CFO of our firm, so he handles all of the
4 expense issues, you can see that of the \$86,944 in expenses
5 incurred by Scott & Scott, the vast majority were for
6 consultants, experts, travel. Those were the three largest
7 categories, you know, followed by mediation and then some
8 miscellaneous amounts.

9 THE COURT: Okay.

10 MS. CLARK-WEINTRAUB: So but each fee declaration does
11 contain that kind of breakdown.

12 THE COURT: All right. I understand your 1318.6 hours
13 that you were co-lead counsel all phases of discovery,
14 depositions; lead role in drafting class cert motion, defending
15 Eighth Circuit appeal attempt; retain expert; mediations, but --
16 and I have Mr. Reese, who describes his work as discovery;
17 drafted opposition to motion to dismiss, motion for class cert,
18 motion for class approval; retained experts; mediation and
19 settlement.

20 The other firms, I have no idea what they did. I've
21 got to have -- you've got to tell me what those lawyers did.

22 MS. CLARK-WEINTRAUB: Sure.

23 THE COURT: And here's what might be helpful.

24 MS. CLARK-WEINTRAUB: Uh-huh.

25 THE COURT: If you look at our local rule --

1 MS. CLARK-WEINTRAUB: Uh-huh.

2 THE COURT: -- it says that in post-judgment cases
3 that I look at where there's fee shifting to prevailing parties,
4 they break it down. That local rule, 54.1, breaks it down. We
5 ask the lawyers to tell us -- you know, I'm assuming there's
6 pre-filing investigation which isn't covered by our local rule,
7 but it says, one, drafting pleadings, motions, and briefs; two,
8 legal research; three, investigation; four -- that's
9 investigation after the suit was filed; four, interviewing. The
10 next two don't show up because we have trial prep and trial.

11 So if I could have some indication for the benefit of
12 the class that's not here, because I want to set out in some
13 detail for the class, particularly the objectors. More
14 importantly, I think, is transparency. The utility of class
15 actions is recognized by the Congress and the Supreme Court, but
16 I'd like to give some credibility to the idea that the lawyers
17 earned their fee. I can't do that without more detail.

18 MS. CLARK-WEINTRAUB: Okay.

19 THE COURT: And, you know, make a filing of some sort
20 so I can use it. When lawyers tell me they did something, I
21 take it on faith that they did it unless it's just beyond the
22 pale, and I don't see anything at this submission that I think
23 would be of that type.

24 So I don't know if you have any comment on any of
25 that.

1 MS. CLARK-WEINTRAUB: I don't, Your Honor. Just for
2 clarification, would you like that breakdown just for the other
3 firms or do you want that for my firm and Mr. Reese's firm as
4 well?

5 THE COURT: It would be helpful. I mean, I assume
6 with software, with computers, that this is not -- I'm not
7 asking you to go back and --

8 MS. CLARK-WEINTRAUB: Yep.

9 THE COURT: -- go through a paper file.

10 MS. CLARK-WEINTRAUB: Yes.

11 THE COURT: So I assume it's available, I just don't
12 have it, and it's going to be helpful in addressing the
13 appropriateness of the fee. I look at the lodestar. The cases
14 tell me that it's a good check against the percentage of the
15 fund allocation that you're asking in this case so --

16 MS. CLARK-WEINTRAUB: Yes.

17 THE COURT: Do you have any other facts or law that I
18 ought to know about?

19 MS. CLARK-WEINTRAUB: I think beyond what we've put in
20 our papers, I don't, Your Honor. I think, you know, a lodestar
21 check is obviously something that the Eighth Circuit has
22 approved, and I think the lodestar check here supports the
23 reasonableness of the fee requests. The multiplier is fairly
24 modest at 1.82, so it's less than a 2 multiplier.

25 So beyond that, if there's any other information I can

1 provide to Your Honor, obviously, I'm happy to do that.

2 THE COURT: All right. Okay.

3 MS. CLARK-WEINTRAUB: Can I just make one -- and I
4 guess we can correct this in the papers, but in our reply
5 memorandum, we had indicated that we had had a downward
6 adjustment in the expense amount, the total expenses, because
7 Mr. Reese had been able to negotiate a discount on an expert
8 fee, a consulting expert fee, in the case.

9 THE COURT: Okay. I've got Document 285 that was
10 filed just the 15th. Does that have -- this is called a
11 "Response to...Motion for Settlement." Does one of those
12 documents tell me that?

13 MS. CLARK-WEINTRAUB: Yes. Yes. In our reply brief,
14 which is 281-1.

15 THE COURT: All right.

16 MS. CLARK-WEINTRAUB: On page --

17 THE COURT: This is Clark-Weintraub declaration in
18 support of final approval?

19 MS. CLARK-WEINTRAUB: No. This is the plaintiff's
20 reply memo, 281-1.

21 THE COURT: Right.

22 MS. CLARK-WEINTRAUB: On page 5, at the very top of
23 the page, there's a line stating that Plaintiffs' counsel have
24 advanced \$204,792.06 in litigation expenses, and that's
25 footnoted to explain this reduction from the opening brief.

1 Actually, and it's my error, and I apologize, Your
2 Honor, that 204 number is slightly too low, and the actual
3 number is 211,042. But we'll make that clear in our
4 supplemental submission, but I did want to apologize to the
5 Court for that.

6 THE COURT: The other thing is you're going to tell me
7 who was deposed, who took the depo --

8 MS. CLARK-WEINTRAUB: Yes.

9 THE COURT: -- and when the depositions were.

10 MS. CLARK-WEINTRAUB: Yes.

11 THE COURT: Any other record you need to make?

12 MS. CLARK-WEINTRAUB: I don't believe so on the fee,
13 beyond what we argued in our papers, Your Honor.

14 THE COURT: All right.

15 MS. CLARK-WEINTRAUB: To follow up just briefly on the
16 exclusions, the late exclusions, at the break Mr. Lonergan
17 informed me that Wells Fargo will not oppose Your Honor
18 accepting the late -- the five late exclusion requests.

19 THE COURT: All right.

20 MS. CLARK-WEINTRAUB: So we wanted to let Your Honor
21 know that.

22 I think then that leaves -- does Your Honor want to
23 hear at all on the final certification of the class? You know,
24 we think the class should be certified, you know, for all the
25 reasons set forth in our papers and for all the reasons the

1 Court previously found in granting class certification.

2 You know, we believe that the requirements of Rule
3 23(a) are easily met here; numerosity, commonality, typicality,
4 and adequacy, and also predominance under 23(b)(3). So given
5 Your Honor's earlier findings and the opinion on class
6 certification, we don't think it's controversial, but I just
7 wanted to make a note that we are moving for final certification
8 of the settlement class.

9 THE COURT: Right.

10 MS. CLARK-WEINTRAUB: And the other issue, I guess, is
11 the request for service awards for the four plaintiffs. We've
12 requested an award of \$10,000 for each of the plaintiffs.

13 You know, the plaintiffs, you know, stuck with the
14 litigation for quite a while. They produced documents, they
15 appeared for depositions, kept in contact with the lawyers, and,
16 obviously, if the case had continued, you know, there was
17 outstanding discovery directed to the plaintiffs from Wells
18 Fargo that would have had to have been responded to.

19 So the plaintiffs were diligent in their duties. We
20 think the amounts are modest and well within the range of the
21 awards that courts have made in similar class action
22 litigation.

23 THE COURT: All right. Thank you very much.

24 MS. CLARK-WEINTRAUB: Thank you.

25 THE COURT: Mr. Reese, do you want to make any

1 record?

2 MR. REESE: No, Your Honor. Ms. Weintraub has done an
3 excellent job, in my opinion.

4 THE COURT: All right.

5 MR. REESE: Thank you, Your Honor.

6 THE COURT: And Mr. Garber?

7 MR. GARBER: No. I agree with what Mr. Reese just
8 said.

9 THE COURT: Okay. Mr. Lonergan, I'm assuming if you
10 want to make any comments in summation, you'll tell me;
11 otherwise, we'll consider the record closed.

12 MR. LONERGAN: Nothing further from the bank, and
13 we'll submit, Your Honor.

14 THE COURT: All right. Well, I want to thank you
15 lawyers for being so well prepared. We'll consider the matter
16 submitted once I get the requested information from Plaintiffs'
17 counsel.

18 We'll be in recess.

19 MS. CLARK-WEINTRAUB: Your Honor, just one point of
20 clarification.

21 THE COURT: Yes.

22 MS. CLARK-WEINTRAUB: Would you like us to make a
23 formal filing on the issues?

24 THE COURT: I think that would probably be the best
25 way to handle it.

1 MS. CLARK-WEINTRAUB: All right.

2 THE COURT: Thanks very much.

3 MS. CLARK-WEINTRAUB: Thank you.

4 (Proceedings concluded at 11:56 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2 I, Kelli M. Mulcahy, a Certified Shorthand Reporter of
3 the State of Iowa and Federal Official Realtime Court Reporter
4 in and for the United States District Court for the Southern
5 District of Iowa, do hereby certify, pursuant to Title 28,
6 United States Code, Section 753, that the foregoing is a true
7 and correct transcript of the stenographically reported
8 proceedings held in the above-entitled matter and that the
9 transcript page format is in conformance with the regulations of
10 the Judicial Conference of the United States.

11 Dated at Des Moines, Iowa, this 4th day of March,
12 2016.

13

14

15 /s/ Kelli M. Mulcahy
16 Kelli M. Mulcahy, CSR, RMR, CRR
17 Federal Official Court Reporter

18

19

20

21

22

23

24

25